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SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

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DEPUTY CLERK ✓

BY: S Smisko

16 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
17 IN AND FOR THE COUNTY OF YAVAPAI

18 STATE OF ARIZONA,

19 Plaintiff,

20 vs.

21 STEVEN CARROLL DEMOCKER,

22 Defendant.

) No. P1300CR20081339

) Div. 6

) **MOTION TO COMPEL**

23 **MOTION**

24 On August 14, 2009, the Defense sent Joseph Butner a letter requesting, pursuant
25 to Arizona Rules of Criminal Procedure 15.1(b) and Rule 15.1(e), and the Arizona and
26 United States Constitutions, numerous materials with respect to the collection and
27 testing of biological evidence in this case. Mr. Butner has yet to respond to one of these
28 requests. The State has disclosed materials related to biological evidence and has
disclosed multiple prosecution experts on the subject.

1 The requested evidence is called for by Arizona Rules of Criminal Procedure
2 15.1(b)(4)(8) and 15.1(e) and is critical to Mr. DeMocker's ability to prepare for his
3 defense in this death penalty case. The State's disclosure deadline was July 15, 2009
4 and trial is set in May of 2010.

5 Defendant Steven DeMocker, by and through counsel, hereby moves this Court
6 to order the Plaintiff to respond to the below-stated requests no later than October 20,
7 2009.

8 **Description of Requested Disclosure**

- 9
- 10 1. The Case File: a copy of the entire case file, including all reports made by
11 the DPS and Sorenson DNA Analysis Units in connection with this case.
12 If the files include photographs, include photographic quality copies.
13 Include laboratory bench notes, worksheets and data on serology,
14 extraction, amplification, quantification and capillary electrophoresis.
 - 15 2. Laboratory Protocols: a copy of all Standard Operating Protocols (SOPs)
16 used in connection with the testing in both labs. Include all SOPs for
17 evidence collection, transport and storage as well as for chain of custody.
 - 18 3. Chain of Custody and Current Disposition of Evidence: copies of all
19 records that document the treatment and handling of biological evidence
20 in the case, from the initial point of collection up to the current
21 disposition. This information should include documentation which
22 indicates where and how the materials were stored (temperature and type
23 of container), the amount of evidence material which was consumed in
24 testing, the amount of material which remains, and where and how the
25 remaining evidence is stored (temperature and type of container).
 - 26 4. Software: a list of all commercial software programs used in the DNA
27 testing in this case, including the name of the software program, the
28 manufacturer and the versions used in this case by both labs.

- 1 5. Macros: If the results produced by the software are dependent upon the
2 instructions contained in macros, copies of any macros used.
- 3 6. Data Files: copies of all data files created and used in the course of
4 performing the testing and analyzing the data in this case. These files
5 should include all data necessary (a) to independently reanalyze the raw
6 data, and (b) to reconstruct the analysis performed in this case.
- 7 7. STR Frequency Tables: copies of any allelic frequency tables relied upon
8 in making statistical estimates in this case. If the laboratory relied upon
9 published or publicly available data, the request may be satisfied by
10 providing a specific reference to the source. Provide copies of all
11 documentation of validation data for the STR methods used by either DPS
12 or Sorenson Laboratory.
- 13 8. Documentation of Corrective Actions for Discrepancies and Errors: a
14 copy of all contamination logs and all documents of corrective actions
15 maintained by the labs that performed DNA testing in this case. If either
16 of the laboratories do not comply with the requirement of the DNA
17 Advisory Board that it maintain this documentation, respond: "The
18 laboratory does not comply with the DAB requirement that it document
19 corrective actions."
20 All documentation of any audits, reviews, or corrective actions that have
21 occurred within 24 months prior to any testing in this case and any time
22 between that testing and the present. Also provide all documentation of
23 any and all corrective actions associated with this case and with all cases
24 done by the analysts working on this case.
- 25 9. Laboratory Personnel: background information about each person
26 involved in conducting or reviewing the DNA testing performed in this
27 case, including (a) the current resume of each individual, (b) the job
28

1 description of each individual and (c) a summary of each individual's
2 proficiency test results. A copy of all records of the evidence collection
3 training received by the criminalists involved. Also a list of each person
4 who has access to the evidence.

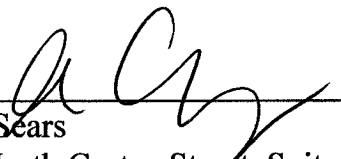
- 5 10. External Audit: a copy of the last external audit for accreditation for DPS
6 and Sorenson Laboratory. Also, confirmation that no other biological
7 evidence, examination or testing has been undertaken apart from what has
8 been disclosed to date. If there have been any additional tests, results and
9 all other related information with respect to those tests.

10 **CONCLUSION**

11 For these reasons defendant Steven DeMocker, by and through counsel, hereby
12 requests that this Court order the State to respond to the above requests for disclosure no
13 later than October 20, 2009.

14 DATED this 6th day of October, 2009.

15
16 By:


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26 **ORIGINAL** of the foregoing mailed for
27 filing this 6th day of October, 2009, with:


28 Jeanne Hicks
Clerk of the Court
Yavapai County Superior Court
120 S. Cortez
Prescott, AZ 86303

1 **COPIES** of the foregoing mailed this
2 this 6th day of October, 2009, to:

3 The Hon. Thomas B. Lindberg
4 Judge of the Superior Court
5 Division Six
6 120 S. Cortez
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